

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds claimant has failed to prove by a preponderance of the credible evidence that timely written claim under K.S.A. 44-520a was submitted in this matter.

Claimant, an oil field worker, was sprayed on his left ankle and knee with Magnatreat "M", a chemical used in oil fields. This chemical is known to be poisonous and claimant immediately cleaned the leg with soap and water.

Later that day, claimant developed symptoms in his leg, including burning. Claimant was hospitalized from September 26 through October 3, 1990, with symptoms of high fever, chills, and a swollen leg, and later developed headaches and dizziness. He was released from the hospital and returned to work for the respondent, only to suffer a reoccurrence in May 1991, for which he was again hospitalized with symptoms similar to those experienced in 1990. During both hospitalizations, claimant and his wife were assured by Mr. Don Sanders, the respondent's local manager, that the medical bills for these hospitalizations would be paid.

After his release from the hospital in May 1991, claimant indicated no additional treatment was scheduled and none anticipated. Claimant continued working for respondent until June 6, 1992, at which time he voluntarily terminated his employment to seek other employment. In November 1993, while working with cattle, claimant was bumped or kicked in the area of the original injury on his left leg and a reoccurrence of the symptoms developed. He was hospitalized under the care of Dr. Chester Stone in Emporia, Kansas. Respondent denied the compensability of this claim, alleging claimant had failed to provide timely written claim as is required by K.S.A. 44-520a. The parties have stipulated written claim was submitted November 12, 1993.

The Administrative Law Judge in granting medical benefits to the claimant cited Blake v. Hutchinson Manufacturing Co., 213 Kan. 511, 516 P.2d 1008 (1973) as controlling. In Blake, the claimant was provided authorized medical care with Dr. Richard O'Donnell. Dr. O'Donnell made several referrals to other doctors and his authorization was never revoked by the respondent. The respondent attempted to deny written claim after they ceased making payments for this authorized medical care citing claimant's failure to provide written claim within two-hundred (200) days of the last payment of medical as a defense to claimant's claim. The Supreme Court, in rejecting this argument, found that it must be presumed in the absence of evidence to the contrary that this authorization continued, having once been established as an ongoing relationship with no indication of its discontinuance by the respondent.

In this matter, the claimant left the hospital in May 1991 with no future treatment scheduled and no additional treatment anticipated. The existence of ongoing medical care makes Blake factually distinguishable from this matter. Where the respondent is on notice that the workman is seeking additional treatment on the assumption that he is still covered, the respondent is under a positive duty to disabuse him of that assumption if the respondent intends to rely on the two-hundred (200) day written claim statute. Blake supra at 515. It is significant that this claimant anticipated no additional medical care subsequent to May 1991. It is also significant that the claimant proceeded for over two and one-half (2½) years until November 1993 before needing additional medical care.

While it is well supported that the furnishing of medical care to an injured employee is tantamount to the payment of compensation and tolls the running of the statute of limitations, it has also been found that a claim once barred due to the running of the statute of limitations cannot be revived even by subsequent voluntary payments of compensation by the employer. Solorio v. Wilson & Co., 161 Kan. 518, 169 P.2d 822 (1946).

The Appeals Board finds that claimant has failed to prove by a preponderance of the credible evidence that he submitted timely written claim pursuant to K.S.A. 44-520a and his claim for benefits is barred.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that for purpose of preliminary hearing the Order of Administrative Law Judge John D. Clark, dated May 12, 1994, is reversed and medical benefits in favor of the claimant and against the respondent and insurance carrier are hereby denied.

IT IS SO ORDERED.

Dated this ____ day of October, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Lisa Lewis, 155 N. Market, Suite 305, Wichita, KS 67202
William L. Townsley, III, 125 N. Market, Suite 1600, Wichita, KS 67202
John D. Clark, Administrative Law Judge
George Gomez, Director